IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

CRP.No. 368 of 2005()

AGAINST THE ORDER IN EP 125/02 IN OS.323/1956 of PRL.M.C.,KANNUR
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REVN. PETITIONERS/RESPONDENTS(LRs' OF D2):
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1. **KAKKANDI KUNHIPATHU, D/O.ASSYA UMMA, NO OCCUPATION, KAKKANDI HOUSE, NEAR M.R.U.P.SCHOOL, P.O., MATTOOR SOUTH.**

2. **KAKKANDI ABDULLA, S/O.ASSYA UMMA, BUSINESS, KAKKANDI HOUSE, RESIDING AT DO.**

3. **KAKKANDI MUSTHAFA S/O.ASSYA UMMA, BUSINESS, KAKKANDI HOUSE, RESIDING AT DO. DO.**

4. **KAKKANDI KHADEEJA, D/O.ASSYA UMMA, NO OCCUPATION, RESIDING AT DO. DO.**

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS/PETITIONERS(LRs' OF PLAINTIFF:
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1. **K.P.MAHAMOOD, S/O.ABDULLA, AGED 66, NO OCCUPATION, RESIDING AT MADAYANTE VALAPPIL HOUSE, MATTOOL AMSOM, DESOM, MATTOOL CENTRE.**

2. **K.P.IBRAHIMKUTTY, S/O.ABDULLA, AGED 62, BUSINESS, RESIDING AT ZOHARA MAHAL, NEAR M.R.U.P.SCHOOL, P.O.MATTOOL SOUTH.**

3. **K.P.ABDUL KAREEM, S/O.LATE ABDULLA, AGED 53 YEARS, KADAVATHPURAYIL, MATTOOL.**

4. K.P.ABDUL RAHIMAN, S/O.LATE ABDULLA, AGED 50 YEARS, RESIDING AT DO. DO.

5. K.P.ABDUL SATHAR, S/O.LATE ABDULLA, AGED 48 YEARS, RESIDING AT DO. DO.

6. K.P.ABDUL NAZAR, S/O.LATE ABDULLAH, AGED 43 YEARS, RESIDING AT DO. DO.

BY ADV. SRI. P.N.K. ACHAN(SR.)
R2 TO R6 BY ADV. SRI.K.MOHANA KANNAN
SRI.K.MOHANAKANNAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 1014 OF 2005
IN
C.R.P. NO.368 OF 2005

DISMISSED

8/10/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

P.R.RAMAN J.

C.R.P.No.368 OF 2005

Dated this the 12th day of July, 2007

O R D E R

The respondents in E.P.No.125/2002 in O.S.NO.323/56 are the revision petitioners. The respondents herein are L.Rs. of the plaintiff, who instituted a suit for injunction restraining the defendants from trespassing into the plaint A schedule property and it was decreed as prayed for. Alleging violation of the decree passed by the court below, the present E.P. was filed. There is no dispute that the decree schedule property is in Sy.No.348/18 whereas there is a house situated in Sy.No.348/16 in the said property. There is a septic tank and a well on the western side of the house, which is in Sy.No.348/18. The house belongs to the judgment debtor. However, since a septic tank and a well attached to the house are situated in Sy.No.348/18, the petitioners disputed the identity of the property in the execution stage and a Commissioner was appointed, who prepared a plan. A septic tank and a well are shown in red shaded portion in Sy.No.348/18 and the house is shown in blue shaded portion in Sy.No.348/16.

2. The court below, after finding that there is violation of the decree,

instead of directing the petitioners to be detained in prison, attached the house in Sy.No.348/16, against which the present revision is filed.

3. This Court by an interim order directed the same Commissioner to re-visit the property and submit a report and plan, after identification of plaint A, B and C schedule properties. Pursuant to the said order, the Commissioner has re-visited the property and submitted a report, which is in conformity with the earlier report and plan submitted before the Munsiff's Court. As such there cannot be any further dispute regarding the identification of the property. However, since the septic tank and well attached to the house fall in Sy.No.348/18 and to avert future dispute between the parties, the learned Senior Counsel Sri P.N.K. Achan was able to persuade his client to agree that the septic tank and well attached to the house be given to the judgment debtor free of cost. However, since the septic tank and well attached to the house do not have a separate compound wall, in order to avert future dispute, it is also agreed between the parties that the petitioners shall construct a compound wall surrounding the well and the septic tank on their own expenditure. Since the Commissioner has already submitted a report and plan, there will be a direction that the Commissioner shall make arrangements for construction

of a wall surrounding the red shaded portion in the supplemental plan in the execution proceedings dated 5/4/2003 submitted before the court below, at least at a height of three feet above the ground level at the expenditure of the petitioners. An estimated expenditure shall be prepared by the Commissioner and shall submit a report before the Munsiff's Court with copy to the petitioners, whereupon the petitioners shall deposit the said amount before the court below. The amount deposited will be disbursed to the Commissioner by the court below and in case any further amount is required, it is open to the Commissioner to submit a report to that effect to the court below, whereupon the balance amount shall also be deposited by the petitioners. A detailed report shall be filed by the Commissioner, after completion of the construction of the compound wall as directed above.

Post after a month.

P.R.RAMAN,
Judge.

kcv.